be returned to his former place of detention or, if the Minister so directs, sent to another place of detention." He also mentioned that section 15(3) of the National Security Act 1980 of India also provided for the machinery in the event of a revocation of a suspension of the detention order. As I indicated to Mr Robertson in the course of arguments, it is plain that when a direction is made, suspending the operation of the detention order pursuant to section 10 of the Act, all that happens in law is that the detention order is made inoperative for the time being. If the direction of suspension is revoked, it must logically and inexorably follow that the detention order becomes operative again and in that event detention is authorized under the detention order. In my opinion, this true and natural construction of the effect of a revocation order under section 10 of the Act is beyond argument and is entirely unaffected by provisions in other statutes.

I now turn to the final submission raised by Mr Robertson after the lunch-break on 23 May 1988. He submitted that there was no evidence that the President was satisfied after he was advised by the Cabinet as required by section 8(1) of the Act. He contended that the affidavit of BG Tan Chin Tiong had made no reference to the subjective satisfaction of the President and that the references in the relevant recitals of the detention orders were hearsay evidence, as signification of the President's satisfied state of mind could only be made by either a Minister or the Cabinet Secretary under section 45 of the Interpretation Act (Cap. 1, 1985 Ed.). He relied on the penultimate paragraph of the judgment of the Chief Justice in *Lee Mau Seng's* case.[10] In view of this gap in the evidence, the writs of *habeas corpus,* he said, must issue.

Mr Tiwari, in disagreeing, submitted that the recitals in the detention orders regarding the subjective satisfaction of the President and the affidavit of BG Tan Chin Tiong, read as a whole, sufficiently established that the President was satisfied, after having acted on the advice of the Cabinet. He also submitted that *Lee Mau Seng*'s case[10] was of no assistance to the applicants. I accept the submissions of Mr Tiwari and must reject the wholly unmeritorious argument of Mr Robertson. In addition to the reasons advanced by Mr Tiwari, I have the following additional observations to make. First, the burden of proving lawful detentions lay on the respondents and this they had discharged by relying on the detention orders: see *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia.*[13] Once this was shown, it was for the applicants to allege and show that the power was exercised without the subjective satisfaction of the President. This assertion of fact must be made by or properly made on behalf of the applicants in an affidavit. Secondly, it should be observed that BG Tan Chin Tiong had in his affidavit claimed that "(i)n the exercise of the powers under section 8" of the Act the Minister for Home Affairs had made the detention orders. Further, BG Tan Chin Tiong in paragraph 14 of his affidavit said: "... I wish to state respectfully that (the applicants were) detained and continue to be detained pursuant to section 8 of the Act because the government is satisfied that it is necessary to detain (them) with a view to preventing (them) from acting in any manner prejudicial to the security of Singapore." These depositions meant or must be taken to mean that the President was also satisfied, as under Part V of the Constitution of Singapore the government includes the President and under article 23(1) the executive authority of Singapore shall be vested in the President exercisable on the advice of the Cabinet as provided under article 21(1) thereof. These depositions on behalf of the respondents were not even mildly controverted or put in issue by any of the affidavits filed on behalf of the applicants and it is not permissible to raise this issue of fact by submissions at the bar in the absence of any factual foundation.

For these reasons, the three motions are, accordingly, dismissed with costs to be taxed on only two motions and paid by the three applicants equally.

Order accordingly.

Solicitors: *Wee Tay & Lim; Rajan Nair; S.K. Chua & Peter Low.*

TURNER (EAST ASIA) PTE. LTD. v. BUILDERS FEDERAL (HONG KONG) LTD. & ANOR. (NO. 2)

[O.C.J. (Chao Hick Tin J.C.) 27 May 1988]

[Singapore – Originating Motion No. 91 of 1987]

Arbitration – Removal of arbitrator for misconduct – Whether arbitrator biased – Test of misconduct – "Real likelihood" or "reasonable suspicion" test – Arbitration Act (Cap. 10, 1985 Ed.), ss. 17 & 32.

The applicants were the main contractors of a building project in Singapore. The respondents were the sub-

contractors for the construction of curtain walls and entrances of the project. Disputes arose between the applicants and the owners of the project which led to both parties purporting to terminate the main contract. As a result, the respondents commenced proceedings against the applicants to seek payment.

Under clause 22 of the sub-contract between the applicants and the respondents, disputes between the parties are to be referred to arbitration. As the parties could not agree on an arbitrator, the court by an order dated 9 April 1987 appointed Mr. Smith as the sole arbitrator as applied for by the respondents *vide* Originating Summons No. 513 of 1986.

By this motion, the applicants seek an order of court, pursuant to section 17 of the Arbitration Act, to remove Mr. Smith as arbitrator on the grounds that he has misconducted himself and/or the proceedings. Specifically, Turner alleged that Mr. Smith did not conduct himself impartially, threatened to or has in fact exceeded his jurisdiction by purporting to make a ruling on a matter falling outside his jurisdiction and continuing the proceedings in total disregard of Singapore law.

The issue that the court had to decide was whether Mr. Smith had misconducted himself and/or the proceedings. In deciding this, the court assessed the facts and took into consideration the voluminous communication and exchange of correspondence between Mr. Smith and the parties involved.

Held: (1) the correct test should be the "reasonable suspicion" test, *i.e.* would a reasonable and fair-minded person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible;

(2) on the facts, the court was satisfied that a reasonable suspicion of bias on the part of Mr. Smith against the applicants was made out;

(3) by not consenting to refer the legal question relating to clause 22 to the court, Mr. Smith had misconducted the proceedings, warranting his removal;

(4) it was ordered that Mr. Smith be removed as the arbitrator and the costs of this motion be borne by the respondents.

Cases referred to:

(1) *Szilard* v. *Szasz* [1955] S.C.R. 3. (cited).
(2) *R.* v. *Camborne Justices, ex parte Pearce* [1955] 1 Q.B. 41 (cited).
(3) *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750 (folld).
(4) *Metropolitan Properties Co. (F.C.G.) Ltd.* v. *Lannon & Ors.* [1969] 1 Q.B. 577 (consd).
(5) *R.* v. *Barnsley Licensing Justices* [1960] 2 Q.B. 167 (refd).
(6) *Hannam* v. *Bradford Corporation* [1970] 1 W.L.R. 937 (refd).
(7) *R.* v. *Liverpool City Justices* [1983] 1 W.L.R. 119 (folld).
(8) *Tracomin S.A.* v. *Gibbs Nathaniel (Canada) Ltd. & Anor.* [1985] 1 Lloyd's Rep. 586 (refd).
(9) *Re Enoch & Zaretzky Bock & Co.* [1910] 1 K.B. 327 (refd).
(10) *Pratt* v. *Swanmore Builders* (1980) 15 B.L.R. 37 (refd).
(11) *R.* v. *Watson* (1976) 9 A.L.R. 551 (cited).
(12) *Modern Engineering (Bristol) Ltd.* v. *Miskin & Son Ltd.* [1981] 1 Lloyd's Rep. 135 (cited).
(13) *"Catalina"* v. *"Norma"* (1938) 61 Ll.L. Rep. 360 (apprvd).
(14) *Smith* v. *Martin* [1925] 1 K.B. 745 (apprvd).

ORIGINATING MOTION.

Wong Meng Meng (*Sundaresh Menon* with him) for the applicants.

M. Karthigesu (*Alan Thambiayah* with him) for the respondents.

Cur. Adv. Vult.

Chao Hick Tin J.C.: The applicants (Turner) were the main contractors of a building project known as "the Gateway", off Beach Road, Singapore. The respondents were the sub-contractors for the construction of curtain walls and entrances of the project. Disputes arose between Turner and the owners of the project which led to both parties purporting to terminate the main contract. The dispute between Turner and the owners has been referred to arbitration. As a result, the respondents (BF-JG) commenced proceedings against Turner to seek payment. Those proceedings were stayed pursuant to section 7 of the Arbitration Act. All the other sub-contractors have joined Turner in pursuing their claims against the owners.

Under clause 22 of the sub-contract between Turner and BF-JG, disputes between the parties are to be referred to arbitration. As the parties could not agree on an arbitrator, BF-FG by Originating Summons No. 513 of 1986 applied to court for the appointment of one Mr. Douglas Smith as the sole arbitrator. The law firm Freshfields represented BF-JG in that originating summons. Turner, through Shook Lin & Bok (SLB), counter-proposed Mr. David Gardam, who is also the arbitrator hearing the dispute between Turner and the owners under the main contract. By an order of court of 9 April 1987, Mr. Smith was appointed the sole arbitrator.

By this motion, Turner seeks an order of court, pursuant to section 17 of the Arbitration Act (Cap. 10, 1985 Ed.), to remove Mr. Smith as arbitrator on the grounds that he has misconducted himself and/or the proceedings. Specifically, Turner alleges that Mr. Smith did not conduct himself impartially, threatened to or has in fact exceeded his jurisdiction by purporting to make a ruling on a

matter falling outside his jurisdiction and conducting the proceedings in total disregard of Singapore law.

Background and complaints

I will now briefly set out the main events leading to this application. The communications between the parties and between them and Mr. Smith are voluminous and I will only refer to those which I think are most critical to the present application. I should add that the communications were conducted mainly through facsimile which should explain why in some instances the reply to a letter occurred on the same day or the day after.

As stated above, the court appointed Mr. Smith as arbitrator on 9 April 1987. On 25 June 1987, Debevoise & Plimpton (D&P), an American law firm in New York, wrote to Mr. Smith, and copied to SLB and the American attorney of Turner, Messrs. Seyfarth Shaw Fairweather & Geraldson (Messrs. Seyfarth), as follows:

"We represent claimants Builders Federal (Hong Kong) Ltd. and Josef Gartner & Co., in the above arbitration.

We are informed that Justice Lai in Singapore ruled a few days ago that no further arguments would be heard by him regarding the order filed on 20 May 1987, appointing you as arbitrator in this matter. Accordingly, notwithstanding the appeal of that order by Turner East Asia, your appointment is presently effective.

We expect to file with you claimants' statement of claim towards the end of next week or early the following week. You may consider it appropriate thereafter to schedule a preliminary meeting of the parties with you to discuss procedures and scheduling for the arbitration.

All communications in this matter should be sent to us at our New York office.

We anticipate moving forward promptly in the presentation of this matter to you."

In his reply of 1 July 1987, Mr. Smith said, *inter alia*, that "a preliminary meeting is clearly essential at an early date and some indications of parties' preferences as to possible dates and location would be helpful". Mr. Smith also asked for a copy of the arbitration clause and enclosed a note of the terms and conditions which he would require to be fulfilled before he would set aside or engage time on the case. One of the terms was that the parties must pay an initial acceptance fee of £10,000 towards account.

On 6 July 1987, SLB wrote to Mr. Smith acknowledging Mr. Smith's letter of 1 July 1987 and commented that in their record, Messrs. Freshfields were acting for BF-JG. On the fees laid down by Mr. Smith, SLB stated that they would seek instructions from their clients.

On the next day, 7 July 1987, D&P wrote and despatched to Mr. Smith the claimants' statement of claim, which statement was also despatched to Turner, SLB and Messrs. Seyfarth. D&P also referred to the preliminary meeting and said that "we would be prepared to attend such a meeting, either before or after the filing by Turner of a response to this statement of claim, although we think that a response from Turner prior to that meeting might make the meeting more productive."

On 8 July 1987, Mr. Richard Preston of Messrs. Seyfarth acknowledged the receipt of Mr. Smith's letter of 1 July 1987 and stated "as this is a Singapore arbitration, I will leave substantive responses to your letters to our Singapore solicitors, Shook Lin & Bok."

On 11 July 1987, SLB wrote to Mr. Smith and it is important for me to set out this letter in full:

"We refer to the letter dated 7 July 1987 from M/s Debevoise & Plimpton, and to our letter dated 6 July 1987.

We regret that we are unable to recognize and accept the role of M/s Debevoise & Plimpton in the arbitration proceedings between our clients Turner (East Asia) Pte. Ltd. and Builders Federal (Hong Kong) Ltd./Josef Gartner & Co. ('BG/JG').

Under the Legal Profession Act, lawyers acting for parties in the domestic arbitration must be admitted to the Singapore bar. The dispute between our clients and BF/JG is such a domestic dispute, governed by Singapore law, and arising out of events in Singapore. It will also be necessary to conduct the proceedings in Singapore, unless the parties waive this requirement.

M/s Freshfields have been acting for BF/JG. Until recently we had no knowledge that M/s Debevoise & Plimpton would be conducting the arbitration on behalf of BF/JG.

Further, we do believe that you have not formally accepted the appointment as arbitrator or have given any directions for the filing of any pleadings, and for the future conduct of the proceedings.

In the circumstances, we do not accept the service of the statement of claim by M/s Debevoise & Plimpton on us and on our clients. We are taking steps to return the copies of the statement of claim."

On that same day, SLB wrote and returned the statement of claim to Messrs. Freshfields who had served it on behalf of D&P. Besides commenting on the *locus* of D&P, SLB also stated, *inter alia*, "we

regard the service to be wholly improper and unacceptable given the absence of any direction by the arbitrator to the parties and any agreement between the parties as to the rules governing the arbitration."

On 13 July 1987, Mr. Smith acknowledged receipt of the correspondence and stated that "clearly a preliminary meeting is now required but I shall postpone attempting to make any arrangements as to time and place *pending clarification* of the matters raised in Shook Lin & Bok's letters to me." (emphasis added).

On 14 July 1987, D&P, after having been notified by Messrs. Freshfields that Turner had returned the statement of claim served on them, stated in a memorandum to Mr. Smith that BF-JG's "position is that the position taken on behalf of Turner under the Legal Profession Act of Singapore is incorrect and put forward merely as a delaying tactic." I note that this memorandum does not appear to have been copied to SLB or Turner.

Then on 16 July 1987, Mr. Smith wrote and made comments which Turner now complain of. While admitting that he was not familiar with the Legal Profession Act of Singapore, Mr. Smith nevertheless remarked "all I can say at present is that it would seem very strange to me if a dispute involving three parties all of differing nationalities could possibly be categorized as a domestic one no matter which law applies." Reversing what he said three days earlier on 13 July 1987, Mr. Smith further stated:

"Debevoise & Plimpton suggested last week that a preliminary meeting would be more productive if held following receipt of a response to the statement of claim and with this view, I would have tended to agree. *However, I now perceive there to be no question of events happening in such sensible sequence.* I am therefore minded to fix a date for a preliminary meeting and in the circumstances the only practicable location has to be Singapore. I therefore propose either Thursday 13, 20 or 27 August for such meeting and invite each party to notify their preference. I will provide in advance of such meeting an agenda and draft directions. Should the question of validity or entitlement to represent claimants by Debevoise & Plimpton not have been resolved between the respective lawyers prior to the preliminary meeting I will rule upon it then after inviting submissions from both sides."

(emphasis added)

Mr. Smith also asked for a copy of the Arbitration Act and the Legal Profession Act.

Also on 16 July 1987, D&P, in response to Mr. Smith, informed the latter that D&P would be submitting a QC's opinion on the point of the Legal Profession Act. They expressed the view that the preliminary meeting need not be held in Singapore though they were prepared to go to Singapore for the meeting if Mr. Smith so decided. D&P also accepted the date 20 August 1987 for the meeting.

The next day, 17 July 1987, SLB wrote to Mr. Smith stating, among others, the following:

"M/s Debevoise & Plimpton appear to take the position that only the issue of venue is in question. That is not so. The additional, and very important issue, is that counsel appearing in a Singapore arbitration must be admitted to the Singapore bar.

We are therefore unable to agree to any meeting or hearing with M/s Debevoise & Plimpton to argue this issue before you. *We reserve the right to raise such other issue as may be necessary to protect our clients' interests or to ensure due compliance with Singapore law.*"

(emphasis added)

On 21 July 1987, Mr. Smith seemed to have taken exception to the remark emphasized in the last paragraph above and he stated "Shook Lin & Bok somewhat unnecessarily, so it would seem to me, reserved a right to raise other issues. I am not aware of any reason to provoke such superfluous comment."

Also on 21 July 1987, D&P transmitted to Mr. Smith an opinion from Anthony Thompson Q.C. In this letter, D&P informed Mr. Smith that litigation was also pending in the United States District Court against the parent company of Turner, which litigation had been stayed pending the resolution of this arbitration. In the opinion of Thompson Q.C., there was nothing in the Singapore law which precluded D&P from acting for BF-JG in the arbitration.

On 27 July 1987, while still waiting for the submission from SLB, Mr. Smith stated the following:

"While fully accepting the inevitability of there being a contrary view which may shortly become manifest in another counsel's opinion, I have to say that I contemplate a continuing difficulty in accepting that this arbitration is in any sense a domestic one. I have in no way closed my mind on this subject but I perceive it as being essential for me to emphasize to Shook Lin & Bok the very considerable burden they will take upon themselves were they to continue in their efforts to convince me that it is.

It remains my intention to hold a preliminary meeting on 20 August. Should I be persuaded then, after inviting both sides to address me if they wish, that Turner (East Asia)'s action, taken apparently on the advice of Shook Lin & Bok,

in returning the statement of claim on the grounds of Debevoise & Plimpton's alleged ineligibility to act for claimants was misconceived or out of order or, perhaps, as claimant's attorneys allege 'obviously designed improperly to delay and impede the progress of this arbitration', then I shall be obliged to take due account both in setting dates and ultimately in awarding costs."

On 28 July 1987, SLB wrote to explain the delay in the submission on the Legal Profession Act issue and indicated that they would do so within the next few days. Turning to the proposed preliminary meeting on 20 August 1987, SLB stated that that date was not suitable to their instructing American lawyer, Mr. Kim Preston of Messrs. Seyfarth, and counter-proposed 24 September, 1 October and 15 October 1987. SLB also said that before a firm decision was made on the date for the preliminary meeting, Mr. Smith should consider SLB's submission first. This letter evoked a rather strong reaction from Mr. Smith on the same date in these terms:

"I am sorry to hear that 20 August would not be suitable for Mr. Kim Preston of Seyfarth Shaw Fairweather & Geraldson, but I really cannot imagine that the presence at a preliminary meeting is essential for one who is so busy as only to have three dates 'available' in the next three months.

Believe me I am not prepared for the timescale of this arbitration to be *dictated* by any of the parties or their lawyers.

Perhaps the preliminary meeting could be held in New York or Washington to suit Mr. Preston's convenience?"

It seems to me there is no logic in Mr. Smith's remark linking the presence of Mr. Preston being essential with the fact that Mr. Preston was so busy as to have only three available dates in the next three months. Turner interpreted this statement to mean that Mr. Smith thought the presence of Turner's American lawyers was not essential. It is not clear what "timescale" Mr. Smith was referring to. He emphasized the word "dictated".

D&P also wrote on that same day, but after receiving Mr. Smith's faxed letter of that date (28 July 1987), that they opposed any postponement of the date, 20 August 1987, set for the preliminary meeting. In this letter, D&P also stated that SLB were aware since April 87 that Mr. Smith was available in August and then during the latter part of October, as that information was communicated to the court in connection with the proceedings to appoint Mr. Smith as arbitrator.

Then, on 29 July 1987, Mr. Smith wrote and in this letter there were the following comments:

"Quite honestly I suspect there may have been some misunderstanding which is not altogether surprising in the circumstances. I daresay if a preliminary meeting were to be arranged in New York or Washington (time of day or night being immaterial!) then Mr. Preston might well find it possible to attend if he is really keen to do so."

Turner complains that the tone of this paragraph is offensive and it seems to cast some doubts on the *bona fides* of Mr. Preston in wanting to attend the meeting.

On 1 August 1987, SLB made their submission on the Legal Profession Act issue and also expressed the view that the issue should properly be tried before a Singapore court. SLB asked Mr. Smith to treat that submission not as a formal submission to Mr. Smith for his decision but only as an expression of the views of SLB. They also said that they would apply to the Singapore court for a ruling shortly, which they did on 17 August 1987.

On 3 August 1987, in response to a point made in the submission of SLB, Mr. Smith made the following observations:

"Shook Lin & Bok seem to have misunderstood the situation. *Alternatively, if they have not misunderstood then they would appear to be consciously attempting to misrepresent the true position.* Three dates were offered by me for a preliminary meeting. I have made it clear that I am prepared to hold it anywhere and at any time that it is convenient to the greatest number of likely essential participants. TEA's American solicitor did not in fact 'propose another date'. Shook Lin & Bok advised simply that Mr. Preston had three dates available and no more. With respect it is *ludicrous* for Shook Lin & Bok now to suggest that I have said or implied that TEA's American lawyer cannot be present after all the alternatives I have offered to make it possible for him to do so. I did not suggest Mr. Preston should attend a meeting at night. It is simply a matter that if he is otherwise engaged and he insists on personally attending a preliminary meeting (I would find it difficult to accept his presence in person as being essential), then I would be prepared to hold a meeting outside normal working hours and if unavoidable way outside them."

(emphasis added)

On 11 August 1987, SLB took strong exception to Mr. Smith's allegation that they might be consciously attempting to misrepresent the true position. Mr. Smith responded on 13 August 1987 by apologizing unreservedly to SLB and stated "for me as arbitrator to have, in their words, 'attacked them' by suggesting they might possibly have been attempting to misrepresent the true position instead of simply misunderstanding it was quite wrong of me." But mid-way through that

letter Mr. Smith wondered whether SLB "are possibly labouring under some misapprehension about the objects of a preliminary meeting". At the end of this letter, Mr. Smith referred to the question of the attendance of Mr. Preston at the preliminary meeting and made the remark "I might have been more persuaded of Mr. Preston's pressing wish and need to be present at a preliminary meeting had I heard something more from him personally since his totally bland letter to me dated 8 July 1987."

Mr. Wong Meng Meng submitted to me that these two remarks were inconsistent with Mr. Smith's earlier statement of apology. He contended that the first remark belittle SLB and the second would seem to suggest that Mr. Smith did not accept what was stated by SLB and wanted confirmation from Mr. Preston personally.

During this time there were further correspondence between Mr. Smith and the parties regarding the preliminary meeting scheduled on 20 August 1987 in Singapore, as well as a proposed agenda and draft order for directions.

On 17 August 1987, SLB wrote to Mr. Smith in the following terms:

"We write to inform you that we will today file in court an application for your removal as arbitrator and a separate application to restrain M/s Debevoise & Plimpton from appearing in this arbitration. In view of the meeting scheduled for 20 August 1987, we are also applying on an *ex parte* basis for an order restraining the arbitration proceedings pending the hearing *inter partes*, of our substantive applications.

In the premises you may wish to suspend all further action in these proceedings pending the outcome of our said applications. Please note that in the light of this notice, our clients will not be responsible for any expenses incurred by you from today (if our applications succeed).

If you agree to put off the 20 August 1987 meeting, and suspend all other proceedings in the arbitration until after the hearing of our substantive applications, we will not proceed with the *ex parte* applications. Please reply urgently on this point. M/s Debevoise & Plimpton are also requested to respond to this point."

Mr. Smith answered the same day, refusing to halt the proceedings by saying that he "cannot and must not depart from strict impartiality in his dealings with the parties. For me now to accept, under threat of Turner East Asia ceasing to be responsible for any on-going expenses, that I should postpone indefinitely a preliminary meeting fixed for three days ahead against a possibility that the Singapore court might remove me would give just cause to the claimants for very serious complaints against me in the event of the application failing." Let me say here that this response on the part of Mr. Smith to the situation then posed to him was correct. This is, of course, a different point from the question whether any of Mr. Smith's previous words or conduct or a combination of them give rise to a cause to remove him.

On 18 August 1987, Turner obtained an interim order from the High Court in Originating Motion No. 90, restraining D&P from acting or appearing for BF-JG in the arbitration proceedings before Mr. Smith. In the present originating motion filed on 17 August 1987, Turner seeks to remove Mr. Smith as arbitrator. An application for an interim injunction to restrain Mr. Smith from holding the preliminary meeting on 20 August 1987 (later altered to 21 August 1987) was made. Though the judge thought that there was an issue to be tried, he refused to make an order, on a balance of convenience, as Mr. Smith and the parties had already arrived in Singapore.

I would just pause here to note two factual points. From the date (25 Jun 87) on which Mr. Smith was informed of his appointment up to 17 August 1987, when this originating motion was instituted, that was only a period of slightly more than seven weeks. Mr. Smith did not formally accept the appointment until 6 August 1987, the date on which the £10,000 was fully paid up towards account.

The preliminary meeting was held on 21 August 1987. While the meeting apparently proceeded without too much difficulties, SLB did, in a letter on 25 August 1987 to Messrs. Cooma Lau & Loh & M. Karthigesu (CLLMK), who have taken over from D&P, expressed their unhappiness over the way Mr. Smith conducted the proceedings. SLB alleged that Mr. Smith was not able to act in an even handed manner. SLB said rulings were invariably made against Turner unless the point was one agreed to by CLLMK. SLB did not copy this letter to Mr. Smith because they wanted "to avoid any suggestions that we are attempting to intimidate him. Our purpose at this stage is merely to record our perception of the events that had transpired." These allegations by SLB were strongly resisted by CLLMK who said that on one or two matters, Mr. Smith did rule against BF-JG.

In the meantime, Order for Directions No. 1, having been agreed between SLB and CLLMK following the preliminary meeting, was issued by

Mr. Smith. Under the directions, Turner was to deliver their points of defence by 20 October 1988. A second preliminary meeting was also fixed for 12 January 1988.

On 9 September 1987, Mr. Smith having read the affidavit of one Mr. Lee Fun, filed on 18 August 1987 in support of the present motion, wrote to CLLMK and SLB in reply to the points raised by Lee Fun. The fact that Mr. Smith has a right to explain is not in question. Turner complains of the manner in which he replied and the tone of it. It will be too long to set out the entire letter. I will only set out the alleged offensive parts:

"It was probably just as well that Shook Lin & Bok did not supply me with a copy while I was in Singapore!

Mr. Lee's affidavit may impress by its size if not perhaps by its content. His use of legal jargon and emphatic statements not always prefaced by 'I am advised and verily believe' might perhaps give rise to questions about editorship (*vide* para 44 and especially use of 'we'). Whilst being a very experienced but possibly not professionally qualified quantity surveyor, perhaps Mr. Lee has the benefit of legal training?

Quite why it was considered essential to include the whole of the sub-contract documentation is hard to imagine!

There are included in his affidavit several examples where he grossly exaggerates or puts a totally irrelevant emphasis on parts of the correspondence often taken out of context (see addendum to this letter for examples) indicates a wholly subjective attitude patently seeking to find ways and means of impressing the High Court of Singapore that I am not impartial.

In para 22, Mr. Lee quite without justification, accuses me of treating the legal system of Singapore with contempt is not only incorrect but *stupid*.

Several assertions in Mr. Lee's affidavit suggest that as a quantity surveyor he knows better than an eminent Q.C. surely tests credibility to the limit. His legal colleagues could possibly advise him as to the risks inherent should one be perceived to have 'over-egged the pudding'!"

(emphasis added)

Then, there is this final paragraph in the letter of 9 September 1987 in these terms:

"In conclusion, I feel obliged to state unequivocally my attitude as arbitrator. Let us consider a hypothetical situation where a party's lawyers, perhaps of their own volition or alternatively acting upon their principal's instructions, seek to delay, postpone or abort a reference. I appreciate and accept that circumstances may dictate such a course of action being adopted and I acknowledge and respect without reservation a party's entitlement so to act. Conversely, however, an arbitrator's task is not to permit unreasonable delays in bringing the matter to a hearing. If one party is likely to be particularly disadvantaged by such delays, possibly where substantial sums of money are alleged to have been wrongly withheld and/or that entitlement to payment is alleged to have arisen a long time ago, then delays if permitted would exacerbate or even imperil its position. Ultimately, of course, an arbitrator's authority encompasses the award as to costs which may act as a deterrent to unreasonable perpetuation of delaying tactics."

Mr. Wong Meng Meng submitted that though Mr. Smith mentioned that the situation he referred to was a hypothetical situation, Mr. Smith was really referring to the present case, bearing in mind these further remarks of Mr. Smith in the addendum:

"Mr. Lee, by taking only a subjective view, erroneously mistakes an arbitrator's obligation not to permit unilaterally inspired delays unfairly to disadvantage a party or parties involved in arbitration, for hostility towards the other party or for lack of impartiality.

In view of the long history of this dispute since notice of arbitration was first given, and respondent's repeated efforts to inhibit or displace the arbitrator eventually appointed by order of Justice Lai Kew Chai (understood to have been made on 9 April 1987), and Mr. Wong Meng Meng's undisguised attempts at the preliminary meeting held on 21 August 1987 then to delay the hearing in his own words 'until the fall of 1988', it is not easy to take seriously the words 'in view of the parties' desire to proceed expeditiously with the arbitration'."

The next significant event occurred on 13 October 1987 when SLB wrote to Mr. Smith to say that in the course of preparing Turner's points of defence they had the occasion to examine the arbitration clause (clause 22), the relevant part of which reads:

"the arbitration shall not, without the written consent of the architect or the contractor and in any case of the sub-contractor, be opened or entered into until after completion or abandonment of the main contract works except...."

SLB said that as Turner had not given their consent, the arbitration should not proceed any further. SLB requested Mr. Smith for his views and stated that if Mr. Smith wanted to make a formal ruling, that the parties be allowed to make submissions on it.

CLLMK, in their letter of 19 October 1987 to Mr. Smith, stated that the past conduct of Turner was inconsistent with the position now taken by SLB. However, CLLMK agreed with SLB's suggestion that Mr. Smith rule on it after submissions from parties. Mr. Smith was asked to set a timetable for submission. In any event, CLLMK

suggested this matter be placed on the agenda for the second preliminary meeting scheduled for 12 January 1988.

On 21 October 1987, Mr. Smith responded to the parties and put forth two alternative procedures to deal with the clause 22 point:

(i) parties will submit and Mr. Smith will rule based on submission; or

(ii) as in (i) but no ruling until second preliminary meeting on 12 January 1988 after, if necessary, hearing oral submission.

Later, both CLLMK and SLB accepted the first alternative.

Then on 23 October 1987, CLLMK reminded SLB that Turner's defence was overdue. On 26 October 1987, SLB replied to say that "in view of the stand taken by us on clause 22, we do not think it appropriate for us to file the defence at all." This letter of SLB crossed with that of the same date written by Mr. Smith in these terms:

"It may be that the respondent is under some misapprehension regarding his obligations in respect of the terms of the Order for Directions No. 1 to all of which his lawyers agreed, notwithstanding his already having made application to the Singapore court to remove me as arbitrator. I have to say that not to have met the first deadline date is in itself perhaps indicative of future performance *but complete failure to have addressed any communication to me in the matter I take as a gross discourtesy to me and to the claimants and their advisers.*

In the event of the application to remove me succeeding, then all will change but until then everything should proceed on the assumption that the application will fail. No other course is available unless both parties were to agree on alternative.

Furthermore the new objection to my proceeding with the arbitration first identified in Shook Lin & Bok's letter dated 13 October 1987 – just seven days before their response was due to be served – similarly does not alter anything unless and until submissions are made and either the claimants accept the respondents' view or I rule in the respondents' favour.

Finally, after having drafted this letter I received by fax from Shook Lin & Bok a copy of their 26 October letter to Cooma Lau & Loh & M. Karthigesu. *No one is likely to be at all surprised by the content* and it does not alter anything I have already stated.

Consideration ought now possibly to be given to invoking clause 28D of the Singapore Arbitration Act."

Mr. Wong Meng Meng, apart from complaining about the tone of the remarks of Mr. Smith above, also thought it improper for Mr. Smith, evidencing of bias, to suggest to CLLMK to take out an application under section 28D (now section 32). Mr. Wong recognized that section 32 permits such an application (to enforce compliance with an order of arbitration) to be made by Mr. Smith as arbitrator.

On 27 October 1987, CLLMK wrote to SLB to ask SLB to file a defence on a without prejudice basis. And in response to Mr. Smith's suggestion of proceeding under section 32, CLLMK in their letter of 2 November 1987 stated:

"We are instructed that, if necessary, our clients would be prepared to make the necessary application to court under section 32 of the Arbitration Act. In the present circumstances, our clients think it apposite to await your ruling on the point taken by the respondents on clause 22 and the conduct of the respondents thereafter before making a decision whether to apply to court under section 32."

On 4 November 1987, SLB explained to Mr. Smith why Turner did not file the defence by 20 October 1987, in these terms:

"We did not address you on the question of the first deadline for filing the defence because we had already raised our objection on clause 22 to which you responded on 21 October 1987. To have filed our defence at that juncture may well have prejudiced our position. Nevertheless, we apologize for any adverse effect our conduct had on you."

Also on the same day, SLB wrote to CLLMK that they would furnish CLLMK, on a without prejudice basis, a draft defence within a fortnight. This letter was not copied to Mr. Smith.

On 5 November 1987, Mr. Smith issued Order for Directions No. 2 wherein he prescribed deadlines for submission by Turner and BF-JG on the clause 22 point. However, he also went one step further and gave the parties the option to apply to the High Court on the point. Both SLB (reserving their rights to take it up to court later) and CLLMK did not think this additional option was needed at this time. Accordingly, this additional part of the direction was deleted. However, there is one startling remark in this letter of 5 November 1987 where Mr. Smith said, in response to an earlier comment by SLB in relation to the function of an arbitrator, that he "neither understand nor accept the reference to 'quasi-judicial capacity'."

So it would appear that by 10 November 1987, there was an understanding between SLB, CLLMK and Mr. Smith as to how the clause 22 point

should be dealt with. This was confirmed by a letter from Mr. Smith on that day. However, on that same day, a second letter was written by Mr. Smith not to the solicitors but directly to the parties themselves, Builders Federal (Hong Kong) Ltd. and Turner (East Asia) Pte. Ltd., and copied to the solicitors. In view of the importance of this letter, I shall set it out in full:

"I have now given considerable further thought to recent developments in this case. *There seems to be at risk a possible denial of justice and for this reason I am addressing this letter directly to the parties.*

Respondent's lawyer's actions are without doubt intended to delay, postpone, thwart or prevent an arbitration taking place. This would defeat the provision in clause 22 of the sub-contract for the procedure to be followed in the event of a dispute arising between the parties to that sub-contract.

I have on an earlier occasion made clear my own views on a party's entitlement so to react when faced with arbitration proceedings. I do not propose here to repeat them. *However, having accepted a tender on the basis of a form of contract incorporating a straightforward arbitration clause and subsequently having signed a sub-contract on that basis, a dispute having arisen a long time ago, there appears to be some disinclination to abide by this particular condition.*

I have therefore to make clear my position as arbitrator in this case, which is that I intend to proceed with the arbitration within a sensible time frame unless otherwise requested by both parties or so ordered by the Singapore court or removed as arbitrator by order of that court.

Times provided in my Order for Directions No. 1 were not at all ungenerous. Were service of documents to be late without good cause or justification or were there to be no service of vital documents at all, then I should have to consider how best to overcome such difficulty. It may be – and I have not yet applied my mind to the matter let alone come to a decision – that a short initial hearing should be held in spring 1988 which might be followed by an interim award. Should one party be insufficiently prepared or possibly unwilling to attend a short initial hearing, that would be entirely up to them.

Whilst I am cognizant of the respondents' current stance in relation to commencement of the arbitration and acknowledging that this matter is as yet undecided one way or another, I would again emphasize that its late introduction does not affect any dates or deadlines unless or until the point be decided in the respondents' favour.

In order to preclude possible misunderstanding or risk of anyone being taken by surprise, my likely responses to possible scenarios would be as follows:

(1) Should respondents fail to provide any response to statement of claim, I would proceed with the arbitration without in any way treating such failure in itself as an admission of claimants' allegations.

(2) Should respondents fail to appear at a pre-trial review or hearing or fail to produce documentary evidence, I would continue the proceedings *ex parte* and make my award on such evidence as is provided for me.

I sincerely hope there will not be a need to have recourse to any of the above processes and that the matter can proceed normally and sensibly."

(emphasis added)

The portions which Turner find particularly objectionable are in italics. SLB in their letter of 18 November 1987 to Mr. Smith stated that by so writing this letter Mr. Smith has further misconducted himself. SLB also observed:

"Although we are not entirely clear as to the meaning of the first paragraph of your letter, it would appear that you have written directly to the parties because you believe that counsel for both sides have not fully protected their clients' interests. If that was the inference you meant for our clients to draw from your actions, we must, we are afraid, disagree strongly.

Further, we must again state that our actions are in no way intended to delay, postpone, thwart or prevent an arbitration from taking place. Rather, our actions are intended to carry forward an arbitration properly and within the provisions of the applicable contract documents. By your statements, you appear to have prejudiced the merits of the case (at least with respect to our position on clause 22) and you certainly appear to have expressed a bias for one side of a question on which you have not yet received the submission of either party."

Turner also replied to Mr. Smith asking him, *inter alia*, to explain what he meant by "possible denial of justice".

CLLMK, in their letter of 24 November 1987 to SLB and copied to Smith, said that it was not inappropriate for Mr. Smith to address the parties directly. They argued that "both your standing and our standing with respect to this arbitration are solely as representatives of the parties and, in our view, such standing does not, in any way, prevent or make it inappropriate for the arbitrator to address correspondence directly to the parties." They then went on to explain Smith's action as follows:

"It seems to us that Mr. Smith intended to do nothing more than fulfil what he viewed as his obligation to the parties, whose action had resulted in his appointment as arbitrator, of informing them directly of certain facts with respect to the conduct of the arbitration.

Furthermore, we see no basis for taking the view that Mr. Smith's letter of 10 November 1987 amounts in any way to a prejudgment of the clause 22 issue, a matter with respect to which he had already established a schedule for submission of the parties' positions to him.

Indeed, it seems to us that as of 10 November 1987, Mr. Smith, not being cognizant of any other arrangement, was

greatly troubled, as any conscientious arbitrator would be, by your clients' complete and total disregard of your agreement and his Order for Directions No. 1. In this light any reasonable view of the position taken by Mr. Smith in his letter of 10 November would be that it was quite acceptable and consistent with his duties as arbitrator.

You go on to state in your letter of 18 November that your 'actions are in no way to delay, postpone, thwart or prevent an arbitration from taking place'. In our view, any objective appraisal of your actions (taken no doubt on instructions) will impel a different conclusion."

Though requested to explain his letter of 10 November 1987, Mr. Smith in his letter of 25 November 1987, merely stated (in so far as concerns this point) that having read the letter of CLLMK of 24 November 1987 "there seems no need for me to add further comment".

Following this, there was an exchange of correspondence between SLB and CLLMK on a misunderstanding whether there was an agreement/understanding between SLB and CLLMK on the question whether there was to be a suspension of the time prescribed for Turner to file their defence. The correspondence on it was not copied to Mr. Smith. When eventually all the correspondence were disclosed to Mr. Smith, Mr. Smith, without consulting or seeking the views of the parties, issued Order for Directions No. 3 which provided that BF-JG should file their reply within 18 days from 11 December 1987 and Turner to file a rejoinder, if necessary, within 14 days after they had been served with the reply.

By 15 December 1987, both parties had made their submissions on clause 22 to Mr. Smith. On 21 December 1987, Mr. Smith rendered his decision, the relevant parts of which are:

"Taking account of the comprehensive documentation which has been rapidly and conscientiously assembled for my consideration by the solicitors for the parties which goes to considerable lengths and incorporates impressive and extensive, but in some respects confusing and contradictory, case law and legal testimony to support, on the one hand, respondents' argument for indefinitely postponing the reference and, on the other, claimants' challenge to such proposal, *I have decided not to make any ruling on clause 22 provisos as in doing so I could not avoid ruling on my own jurisdiction.* Which is to say that whilst accepting in principle the respondents' third submission at 18 of 'respondents' reply' without necessarily accepting the whole of it, I have come to a conclusion that with due respect to but using and slightly amending SLB's wording, it is 'inconceivable to imagine that the arbitrator in these proceedings has jurisdiction to determine whether or not the main contract works have been abandoned'.

However, whilst having decided not to make a ruling on clause 22 provisos, I have most carefully considered the merits of the challenge to my jurisdiction made by SLB on behalf of the respondents in this arbitration. It is my view that *respondents' arguments, whilst persuasive, are not overwhelmingly* so to provide sufficient grounds for me as a non-lawyer arbitrator to postpone indefinitely the continuation of this arbitration reference. I propose then to leave to a judge of the Singapore High Court to decide, in the light of the arguments put forward and previous activities of disputants, if clause 22 of the sub-contract does preclude or should have precluded my continuing with this reference to arbitration.

Meanwhile I shall continue with this arbitration on the assumption that I do have jurisdiction unless and until I am ordered by the Singapore court not to do so."

(emphasis added)

As stated above, the second preliminary meeting was fixed for 12 January 1988. In view of the new developments relating to clause 22, SLB on 5 December 1987 wrote to Mr. Smith that it might be appropriate to defer that meeting until the jurisdictional point on clause 22 had been clarified or decided upon. CLLMK wrote opposing the application to vacate the date for the second preliminary meeting. After some correspondence on the matter, Mr. Smith ruled that the second preliminary meeting should proceed as scheduled. Then, on 28 December 1987, Mr. Wong Meng Meng of SLB wrote to Mr. Smith, proposing to bring forward the meeting by one day because his "office appears to have overlooked my having a court hearing on 12 January 1988". To this Mr. Smith, who was scheduled to arrive in Singapore on 10 January 1988, replied on 30 December 1987 as follows:

"In view of the date having been agreed last August and reference to it having been made so frequently of late, I am reluctant now to change it as requested by SLB. However, were SLB themselves to undertake to meet all costs of now changing the date and providing such change were not to be unacceptable to CLLMK, then I should be prepared for such change to be made. Unless I hear that both parties' solicitors have agreed to such a change and have arranged with Westin Stamford Hotel within the next 48 hours, then arrangements as ordered and made shall stand."

Also on 30 December 1987, CLLMK wrote to Mr. Smith to say that 11 January 1988 would not be convenient to their clients' representative. Further, for both Messrs. Karthigesu and Alan Thambiayah who were and still are handling this matter for BF-JG "almost all of the period 11 January to 23 January 1988 will be spent in conference with other clients". Accordingly, CLLMK said they were unable to agree to SLB's proposal. Thereafter, following a direct conversation between Mr. Wong Meng Meng and Mr. Thambiayah, they agreed on 13 January 1988.

This is, of course, a small matter. What SLB complained about was the attitude of Mr. Smith. On such a minor matter, a shift of just one day, Mr. Smith could not even act fairly and had to ask SLB to undertake all additional costs of changing the date, when nobody else mentioned about costs. It would appear that Mr. Smith responded even before hearing the views of CLLMK on it. Further, SLB alleged that the 48-hour deadline given was hardly adequate or reasonable, bearing in mind the intervening New Year holidays.

The next development concerns the decision of Mr. Smith on clause 22. By Originating Summons No. 16 of 1988, filed on 9 January 1988, Turner applied for the revocation of Mr. Smith's authority as arbitrator on the ground that he is conducting this arbitration in excess of his jurisdiction. At the second preliminary meeting, it would appear that SLB on behalf of Turner made an application to Mr. Smith for his consent to refer the clause 22 jurisdictional point to the court for a determination and if that consent was forthcoming, Turner would be prepared to withdraw Originating Summons No. 16 to avoid another round of adversarial proceedings. Mr. Smith refused to give his consent. Neither did BF-JG give theirs.

The second preliminary meeting was held on 13 January 1988. A number of complaints were made by SLB on the way Mr. Smith conducted the proceedings. These were disputed by CLLMK. I do not propose to go into that. However, when discussing the dates for the hearing of the arbitration, it would appear that Mr. Wong did inform Mr. Smith that the main arbitration with the owners of the project would take place from 11 April to 11 May 1988. Notwithstanding this, Mr. Smith suggested the following three periods for the hearing of this arbitration: 21 March 1988 – 16 April 1988, 25 April 1988 – 14 May 1988, 7 June 1988 – 21 July 1988. There were some disputes as to the circumstances under which these suggestions were made by Mr. Smith. But it was not denied that those three periods were suggested by Mr. Smith. The first two periods clearly conflict with the dates for the hearing of the main arbitration. Turner complains that this is hardly the way in which a fair-minded arbitrator should act.

The last point raised by Turner to which I will refer now relates to the contracts which Mr. Smith had with Freshfields BF-JG/D&P prior to and subsequent to 25 June 1987. This was setsout in SLB's letter of 20 January 1988 and Mr. Smith was asked to confirm certain facts and to furnish some specific information. SLB ended their letter by saying "we ask for these particulars as it is our intention to draw inferences from these matters and we thought it only proper that we have your comments on them." In answering on 21 January 1988, Mr. Smith made these remarks: "The undisguised intention to convey an impression to third parties of lack of trust in my impartiality as arbitrator looks to be more of an ingenuous ploy than a firmly held conviction." SLB in their letter of 25 January 1988 requested Mr. Smith to confine himself to answering questions put to him and refrain from making further unpleasant remarks. However, in his further response also of 25 January 1988, Mr. Smith regretted that he was not able to accede to that request.

Law

I will now consider the law applicable to the removal of an arbitrator. Section 17(1) of the Arbitration Act provides that the court may remove an arbitrator if he has misconducted himself or the proceedings. The Act does not define what amounts to misconduct.

Parties are entitled to expect from an arbitrator complete impartiality and indifference, both as between themselves and with regard to the matters left to the arbitrator to decide. They are also entitled to expect from him a faithful, honest and disinterested decision. Lack of impartiality or bias will be a ground on which objection may be taken against an arbitrator – see Russell on *Law of Arbitration* (20th Ed.) at pp. 143 and 144 and *Szilard* v. *Szazz.*[1]

Mustill & Boyd on *Commercial Arbitration* at p. 215 states that: "It is not, however, necessary to go as far as establishing actual bias, for the court will in appropriate cases intervene if facts are proved which would lead a reasonable person, not knowing the arbitrator's state of mind, to think it likely that there was bias." There appears to be a conflict in the authorities as to the test to be applied in determining bias: is it "real likelihood" or "reasonable suspicion" of bias? For example, *R.* v. *Camborne Justices, ex parte Pearce*[2] adopted the former test. *Allison* v. *General Council of Medical Education*[3] adopted the latter test. Mustill & Boyd take the view that the latter is the correct test.

In *Metropolitan Properties* v. *Lannon*[4] which concerned the question whether the chairman of a rent assessment committee was biased in view of

his links with the parties who were before him, Lord Denning MR stated at p. 599:

"In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand: see *R.* v. *Huggins* [1895] 1 Q.B. 563 and *R.* v. *Sunderland Justices* [1901] 2 K.B. 357 per Vaughan Williams L.J. Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough: see *R.* v. *Camborne Justices, ex parte Pearce* [1954] 2 All E.R. 850 and *R.* v. *Nailsworth Licensing Justices, ex parte Bird* [1953] 2 All E.R. 652. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: 'The judge was biased'."

It should be noted that while Lord Denning referred to a "real likelihood" of bias, it is nevertheless the appearance that counts. Danckwerts L.J. in that case seemed to think that a court should interfere if a person knowing the circumstances might reasonably feel doubts as to the tribunal's impartiality. Edmund-Davies L.J., after reviewing the real likelihood test propounded in *R.* v. *Camborne Justices*[2] and *R.* v. *Barnsley Licensing Justices,*[5] said at p. 606:

"With profound respect to those who have propounded the 'real likelihood' test, I take the view that the requirement that justice must manifestly be done operates with undiminished force in cases where bias is alleged and that any development of the law which appears to emasculate that requirement should be strongly resisted. That the different tests, even when applied to the same facts, may lead to different results is illustrated by *R.* v. *Barnsley Licensing Justices* itself, as Devlin L.J. made clear in the passage I have quoted. But I cannot bring myself to hold that a decision may properly be allowed to stand even although there is reasonable suspicion of bias on the part of one or more members of the adjudicating body."

In the later case *Hannam* v. *Bradford Corporation*[6] the test which the county court judge applied was: whether "a reasonable man would say that a real danger of bias existed". When the matter came before the Court of Appeal, Sachs L.J. doubted whether in practice materially different results would be produced by the "real likelihood of bias" test or the test adopted by the county court judge. He also approved the decision in *Lannon*[4] and the reasons there given by Lord Denning. Cross L.J. thought there really was little, if any, difference between the two tests and added at p. 949:

"If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias. Of course, someone else with inside knowledge of the characters of the members in question might say: 'Although things don't look very well, in fact there is no real likelihood of bias.' That, however, would be besides the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased."

These views of Cross L.J. were expressly accepted and approved by Ackner L.J. in *R.* v. *Liverpool City Justices,*[7] who went on to propound this test: would a reasonable and fair-minded person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible?

While both Cross L.J. in *Hannam*[6] and Ackner L.J. in *Liverpool City Justices*[7] thought that there was little, if any, difference between the two tests, Staughton J. in *Tracomin* v. *Gibbs*[8] thought otherwise. Be that as it may, in my view the correct test should be the "reasonable suspicion" test and I would adopt the formulation of Ackner L.J. as set out above. It must be borne in mind that the decision of an arbitrator under the Arbitration Act is final at least in so far as findings of fact are concerned. If there is a reasonable suspicion as to the impartiality of an arbitrator, I do not think he should be allowed to continue to act in the matter.

Mr. Karthigesu, in his submission to me, made the observation that in all the above cases the alleged bias was of the "situation" type and they are not of the sort of cases this court is now asked to decide, *i.e.* allegations of bias because of the way in which the arbitrator conducted the proceedings. I doubt this difference necessarily meant that a different test should be applied. In any event, I will now refer to several cases of the kind as the present case. The first is *Re Enoch & Zaretzky Bock & Co.*[9] In that case, the allegation was that the umpire did not conduct the arbitration proceedings fairly and impartially. Among the complaints in that case were that from an early

date, the umpire had made up his mind; that without the consent of the parties and without informing them of the nature of the evidence, the umpire himself, on his own initiative, called as a witness a person to whose evidence the umpire attached great weight; that he would not grant an adjournment for a party to obtain further evidence from Rangoon; that the umpire, while agreeing that he would state certain questions of law for the opinion of the court, would not do so unless that party first handed in a cheque for £150 on account of legal expenses. Cozen Hardy M.R., after reviewing the facts, said:

"I do say his conduct as umpire, as manifested by the particulars which I have given, is such that it would not be satisfactory, it would not be fair, it would not be just, to leave the rights of the parties, as they necessarily would be, in his sole hands."

This test was adopted by Peter Pain J. in *Pratt* v. *Swanmore Builders,*[10] who also took the view that it "could be misconduct to fail in important respects to show the elementary skill of an arbitrator."

I turn next to the Australian case *R.* v. *Watson,*[11] a decision of the Australian High Court. There, it was a judge of the Family Court of Australia who the applicant alleged was biased, not through interest or by reason of any relationship, but by reason of some pre-determination he had arrived at in the course of the case. Barwick C.J., Gibbs, Stephen and Mason JJ. in a joint judgment, after reviewing the authorities on the test to be applied in determining bias, said at p. 565:

"It remains, then, to apply these principles in the circumstances of the present case. The question is not whether there was a real likelihood that Watson J. was biased. The question is whether it has been established that it might reasonably be suspected by fair-minded persons that the learned judge might not resolve the question before him with a fair and unprejudiced mind."

In *Modern Engineering* v. *Miskin,*[12] the arbitrator made a ruling on a point and gave an interim award against a party without having heard the submissions on it. It was agreed between the parties that the arbitrator misconducted the proceedings. There was no allegation of bias in that case. In determining the test to be applied whether to remove an arbitrator in those circumstances, Lord Denning said at p. 138:

"This does seem to me a most serious matter. The judge put this test to himself in his judgment: Are the circumstances such as to demonstrate that the arbitrator is not a fit and proper person to continue to conduct the arbitration proceedings? I do not think that was the right test. I would ask whether his conduct was such as to destroy the confidence of the parties, or either of them, in his ability to come to a fair and just conclusion.

The question is whether the way he conducted himself in the case was such that the parties can no longer have confidence in him. It seems to me that if this arbitrator is allowed to continue with this arbitration, one at least of the parties will have no confidence in him. He will feel that the issue has been pre-judged against him. It is most undesirable that either party should go away from the judge or an arbitrator saying, 'I have not had a fair hearing.' "

Lastly, I would refer to *"Catalina"* v. *"Norma"*[13] where a very senior and eminent King's Counsel, while acting as an arbitrator, was heard to have uttered remarks to the effect that Italians were liars and so were the Portugese and one of the parties before him was Portugese. In that case, the Divisional Court of the King's Bench Division, consisting of two judges, held that the arbitrator approached the matter with a bias against witnesses of Portuguese nationality. The decision of the arbitrator was set aside.

Assessment of the facts

There can be no doubt that an arbitrator must always act judicially with a detached mind and with patience. He must not at any time descend into the arena or take an adversarial role. His response and words used must always be measured and circumspect.

I will now examine the grounds of complaint made by Turner against Mr. Smith. But I should make it clear that the letters and remarks set out hereinbefore are not the only ones which Turner complain of. There are many others as one can see from the affidavits filed. But I do not think it necessary to set them all out in view of the decision I take based on those matters referred to herein. It would only unnecessarily burden and lengthen an already long judgment.

D&P informed Mr. Smith of the appointment on 25 June 1987. On 1 July 1987, Mr. Smith replied, which among other matters set out his terms for the acceptance of the appointment, which included the payment by the parties of a sum of £10,000 as initial payment towards account. On 11 July, SLB wrote an important letter which contained two main points. First, that D&P could not under the Legal Profession Act act for BF-JG in this arbitration, which is a "domestic arbitration", governed by Singapore law and arising

out of events in Singapore. Second, that it was premature for D&P to serve the points of claim when the arbitrator had yet to accept the appointment or issue any directions as to how the arbitration should proceed.

While earlier, Mr. Smith thought that a preliminary meeting was clearly required, he decided on 13 July 1987 to defer making arrangements for that meeting pending clarification of the matters raised by SLB. On 14 July 1987, D&P alleged in a letter to Mr. Smith, which apparently was not copied to SLB, that the point made by SLB on the Legal Profession Act was incorrect and "put forward merely as a delaying tactic". This seems to have led Mr. Smith to write the letter of 16 July 1987, which Turner alleged indicated bias on the part of Mr. Smith. I do not think it was appropriate for Mr. Smith, while admitting that he was not familiar with the Legal Profession Act and while awaiting submission, to have remarked that "it would seem very strange to me if a dispute involving three parties all of differing nationalities could possibly be categorized as a domestic one no matter which law applies." He had not heard the parties and yet he seemed to have made up his mind on the point, though only tentatively. Although Mr. Wong Meng Meng admitted subsequently that his reference to "domestic arbitration" is not an entirely happy one, that reference was in any event amplified by the expression "governed by Singapore law and arising out of events in Singapore". Then going on to deal with the setting up of the preliminary meeting, Mr. Smith agreed with D&P that the meeting would be more productive if the meeting were held after Turner had filed their defence to the statement of claim and he then remarked, "However, I now perceive there to be no question of events happening in such sensible sequence." Mr. Karthigesu asked me to view this remark in the context. It should be taken to mean the proceeedings not taking place in the proper sequence. Viewed objectively in the context, I perceive an element of criticism or reproach in that remark. That was made barely 15 days after Mr. Smith indicated that he was willing to accept the appointment but had not done so yet. I tend to agree that in the context the remark implied that Turner and/or SLB were preventing the arbitration from proceeding in a sensible sequence by raising non-meritorious points.

The second main point of complaint relates to Mr. Smith's letter of 21 July 1987. Mr. Wong submitted that there was no reason for Mr. Smith to take offence on the reservation made by SLB: "We reserve the right to raise such other issues as may be necessary to protect our clients' interest or to ensure due compliance with Singapore law." Mr. Karthigesu submitted that the statement of Mr. Smith that SLB "somewhat unnecessarily so it would seem to me reserve a right to raise other issues. I am not aware of any reason to provoke such superfluous comments" was itself just a comment. Mr. Karthigesu said that parties should not be overly sensitive as issues were being argued in correspondence. As I said above, an arbitrator should remain detached and not take issues unnecessarily with any of the parties. A counsel is always entitled to reserve the position of his client. Indeed, this reservation might well be considered necessary to avoid misunderstanding. In the circumstances, a query may perhaps be more appropriate than the response given by Mr. Smith which again seems to contain an element of reproach.

The third main point of complaint relates to Mr. Smith's letter of 27 July 1987. Without hearing the views or submission from SLB for Turner, Mr. Smith again prematurely gave his views on the Legal Profession Act issue though he did qualify himself by saying that "I have in no way closed my mind on this subject." Mr. Karthigesu said this did not amount to prejudging the issue. By emphasizing to SLB the "considerable burden" which SLB would have to bear to make him change his views on this matter, I am of the opinion that it could be construed that he was not going to give equal consideration to the arguments of the parties. Also in this letter, Mr. Smith gave a warning to SLB/Turner of the consequences if the Legal Profession Act issue they raised was without merit. Mr. Karthigesu argued that Mr. Smith was giving the parties fair warning, not just Turner. It was just plain talk. It was not an attempt to force Turner to give up their objection. In my view, it is clear from this letter that Mr. Smith was not kindly disposed towards SLB/Turner in raising the point even though he had earlier in another letter stated that he was not familiar with the Legal Profession Act of Singapore.

The fourth main point of complaint relates to the letter of Mr. Smith dated 28 July 1987. On this letter I tend to agree with Mr. Wong that Mr. Smith was impliedly suggesting, notwithstanding the illogicality mentioned above, that it was not necessary for Mr. Preston to attend the first preliminary meeting. Mr. Smith mentioned that he

was not to be dictated by any of the parties or their lawyers. The tone of the letter is offensive. The situation then was not as though many attempts had been made to fix a meeting and that some months had passed since Mr. Smith accepted the appointment. Indeed he has not accepted it yet. Mr. Smith made a proposal with three dates. What followed was a counter-proposal from SLB with three other dates. I do not think those circumstances amount to attempts at dictating to Mr. Smith as to warrant the chastisement by Mr. Smith that he would not be dictated by the parties. Mr. Karthigesu conceded that there may be a slight facetiousness in this letter.

Again there seems to be some insinuation as to the *bona fides* of Mr. Peston in wanting to attend the first preliminary meeting in the letter of Mr. Smith of 29 July 1987. Mr. Karthigesu submitted that this letter was a genuine attempt by Mr. Smith to accommodate everyone. But the tone of the letter does not bear it out.

The fifth main point of complaint relates to the attack made by Mr. Smith on SLB in his letter of 3 August 1987 where he alleged that SLB "would appear to be consciously attempting to misrepresent the true position". Mr. Smith apologized unreservedly for this remark, after a strong protest from SLB. While Turner was prepared to accept the apology, Mr. Wong said that Mr. Smith then went on, in that letter, to query whether SLB were possibly labouring under some misapprehension about the object of a preliminary meeting. Mr. Smith also proceeded to cast doubts whether Mr. Preston did really want to attend the preliminary meeting. This is the very point which caused Mr. Smith to make the offensive remark in the first place and for which he had to apologize. Mr. Wong contended that all these substantially detract from the apology.

Based on these five main points of complaint, which had all occurred before the institution of the present motion, I am satisfied that a reasonable suspicion of bias on the part of Mr. Smith against Turner is made out. Much that I regret saying this, Mr. Smith does not seem to be able to restrain himself from entering into the fray. He seems to have forgotten that an arbitrator should always be detached, rule only when necessary and even then only after hearing the parties. He seems prone to making premature utterances. Indeed his first letter of 1 July 1987 is a classic example. Without hearing the parties, or at least SLB, he said that a preliminary meeting was *clearly essential at an early date*. The language used by Mr. Smith is also far from measured. The remarks are sarcastic, to the point of being hostile. How could Turner have confidence in Mr. Smith that he would render a fair and impartial decision. Even assuming for a moment that the points raised by Turner were without merit and that SLB were wrong to say that they would not attend a meeting where D&P were present, I seriously doubt the sort of replies given by Mr. Smith are correct. He should just make his ruling and give his reasons. He should always maintain the dignity and impartiality of that appointment.

Even without examining the events after the institution of the present motion, I would hold, based on the matters hereinbefore referred to, that Mr. Smith should be removed for misconducting himself and the proceedings.

I will now examine the events after the institution of this motion. The next important letter is that of 9 September 1987 written by Mr. Smith in defence of this motion to remove him. I accept the submission of Mr. Karthigesu that Mr. Smith is entitled to fully explain the situation and to defend himself, if necesssary, vigorously. But he must nevertheless maintain his dignity and respond in a manner which does not give rise to unnecessary offence. Instead, what I see in this letter is that Mr. Smith resorted to ridicule and took up points unbefitting an arbitrator. I have noted his frequent use of the exclamation mark. Further, his hypothetical situation cuts too close to the bones. Read in conjunction with his remarks (*e.g.* "Mr. Lee, by taking only a subjective view, erroneously mistakes an arbitrator's obligation not to permit unilaterally inspired delays, unfairly to disadvantage a party or parties involved in arbitration, for hostility towards the other party or for lack of impartiality") in the addendum, the irresistible conclusion is that the hypothetical case he was referring to is the present case. I must also add that though Mr. Smith at this time knew that an interim injunction was granted to restrain D&P from appearing at the preliminary meeting before him, which went to show that the point on the locus of D&P raised by Turner was not totally devoid of merit, Mr. Smith nevertheless in this letter of 9 September 1987 went on to insinuate that Turner was taking totally unmeritorious points to delay proceedings. In passing, I should state that the High Court had in a judgment delivered on 30 March 1988 vindicated the stand taken by Turner on the Legal Profession Act issue (see *Turner (East Asia) Pte. Ltd.* v. *Builders Federal (Hong*

Kong) Ltd. & Anor. [1988] 2 M.L.J. 280]. I am not in any way suggesting that an arbitrator has misconducted himself or the proceedings if he makes a wrong decision in law. Far from it. It was the way in which Mr. Smith went about dealing with this issue that left much to be desired.

The next matter that I would refer to is the letter of 26 October 1987 of Mr. Smith where he reminded Turner of their obligation to file their defence, as the defence was overdue. While I would agree with Mr. Smith that the fact that the clause 22 point was raised by SLB did not *ipso facto* suspend Turner's duty to file their defence, Mr. Smith seems to have taken this default in a rather personal way. Mr. Karthigesu, while conceding that the second last paragraph of this letter might have contained harsh remarks, argued that they were nevertheless proper in the circumstances. He argued that the reference to section 28D in the last paragraph should be viewed as thinking aloud on the part of Mr. Smith and not as a suggestion to BF/JG to make an application to court under that section. In the circumstances then, I would have thought a simple but firm letter to Turner/SLB reminding them of the overdue defence should suffice. Again there appears to be an element of hostility in this letter. In the context, the reference to section 28D (now section 32) of the Arbitration Act does give the impression that Mr. Smith was prompting BF-JG to resort to that section.

The next main complaint relates to the letter written by Mr. Smith on 10 November 1987 direct to the parties themselves. While I have noted the explanations offered by CLLMK on the letter, I do not think it is for CLLMK to answer for Mr. Smith why it was necessary for him at that point in time to write that letter. Granted that at that time Mr. Smith did not know that SLB had agreed with CLLMK that Turner would file its defence informally on a without prejudice basis. But at that time a timetable had been agreed upon to deal with the clause 22 issue. What was the pressing need for Mr. Smith to write this letter. He alleged that "there seems to be at risk a possible denial of justice". It is not clear what "risk" and what "denial of justice" he was referring to. Having read CLLMK's reply, Mr. Smith, though requested by Turner to explain, chose not to make any further comment on his action.

Mr. Karthigesu argued that I should look at this letter with the full background in mind – the fact that the court appointed Mr. Smith in preference to Mr. Gardam because of his early availability, which to Mr. Smith meant he should move forward expeditiously; the earlier problem relating to the Legal Profession Act; and finally the raising by SLB of the clause 22 issue. Mr. Karthigesu submitted that this letter is no evidence of bias. On the contrary it is evidence of a conscientious arbitrator.

While I would agree that there is no absolute rule against an arbitrator corresponding directly with the parties, this, in my view, should only be done in very exceptional circumstances. In this case CLLMK and SLB were then actively representing the parties. There was no warning or notice given by Mr. Smith to SLB and CLLMK that he proposed to write direct to the parties. Who was it that Mr. Smith wished to complain against by writing this letter? I agree with Mr. Karthigesu that an arbitrator must act with all reasonable despatch as provided in section 18 of the Arbitration Act. But surely he must also consider and rule on each point raised on the merits. CLLMK, SLB and Mr. Smith had all agreed on the procedure to deal with the clause 22 issue. As Mr. Smith chose not to give the court the benefit of his explanation for writing that letter, I find, having considered all the circumstances, considerable persuasiveness in the suggestion of Mr. Wong that the target of the letter could probably be CLLMK. In my view this seems to be borne out by the second and third paragraphs of the letter, where Mr. Smith quite clearly thought that the clause 22 issue raised by SLB/Turner was without merit. Mr. Smith was probably disappointed that CLLMK did not more vigorously resist the clause 22 issue and invoke section 32 of the Act as he had hinted. Instead CLLMK agreed to a timetable for submission. CLLMK also agreed to SLB filing the defence on a without prejudice basis. I should also add that by stating what he did in paragraphs two and three, he seems to have acted contrary to what he directed: parties would submit first and he would then decide. Here, it would appear he had already formed his views on clause 22 notwithstanding that three paragraphs later he recognised that the issue was yet to be determined. This is acting contrary to the rules of natural justice.

At this point it may be pertinent to recall the remark made by Mr. Smith in his letter of 5 November 1987 that he neither accepted nor understood the reference to "quasi-judicial capacity". Mr. Karthigesu tried to explain that Mr. Smith meant to suggest he was acting in a "judicial capacity" rather than "a quasi-judicial capacity". In the context, I do not think this could have been

what Mr. Smith meant. This perhaps explains all the premature utterances he made and the strange/unjudicious remarks of his against Turner/SLB; the sort of remarks, if they do come at all, one would expect them to come from an opponent.

In my view this letter of 10 November 1987 is clear evidence of bias on the part of Mr. Smith. It also shows Mr. Smith had made up his mind on a point on which he had yet to hear the parties: somewhat similar to the situation in *Modern Engineering* v. *Miskin*.[12] In my judgment, this letter on its own is sufficient to warrant the removal of Mr. Smith.

The next event I would touch on is the request by SLB to bring forth the date of hearing of the second preliminary meeting from 12 to 11 January 1988. Instead of waiting for the response from CLLMK before making any comments, Mr. Smith again in his letter of 30 December 1987 uttered words which were unnecessary at that point in time. While this event in itself is not of much significance, it does cumulatively with previous acts and words show the attitude of Mr. Smith.

I now turn to Mr. Smith's decision on clause 22. He found the submissions, with conflicting legal authorities tendered, difficult. He made no ruling on it as he felt he should not rule on his own jurisdiction. That is correct. However, he did say that Turner's arguments were persuasive though not overwhelming. Since the clause 22 issue goes to the root of his jurisdiction, he should have, as he himself was unable to decide the matter, given his consent to refer the question of law to the court to decide as requested by Turner. Instead, he felt the need to press ahead, even though he said that he proposed to leave to a judge of the High Court to decide. How can the High Court decide without a reference? There appears to be some illogicality here. Under section 29 of the Arbitration Act, an application to court to determine a preliminary point of law can only be made with the consent of an arbitrator or with the consent of all the other parties.

Russell on Law of Arbitration (20th Ed.) at p. 91 states "it can hardly be within the arbitrator's jurisdiction to decide whether or not a condition precedent to his jurisdiction has been fulfilled." In *Smith* v. *Martin*,[14] the arbitration clause provided "reference shall not be opened until after completion of the works." It was held that the arbitrator had no jurisdiction to determine whether the works had been completed, that in fact they had not been completed and therefore that an award by the arbitrator was bad.

Accordingly, in my judgment, by not consenting to refer the legal question relating to clause 22 to the court, Mr. Smith has misconducted the proceedings, warranting his removal. Further, his refusal to so consent to refer the point to the court is also some evidence that he was not acting fairly.

Turning to the way in which Mr. Smith sought to arrange the hearing dates for the arbitration during the second preliminary meeting, that is again unfortunate. Why did he offer two periods which conflict with the hearing dates of the main arbitration. Turner and their witnesses could not possibly be at two places at the same time.

The last point that I wish to touch on is the letter dated 25 January 1988 from SLB to Mr. Smith requesting Mr. Smith to refrain from making further unpleasant remarks. To this request, Mr. Smith refused to accede. Can there still be faith in Mr. Smith's impartiality?

From the foregoing there is no doubt in my mind that Mr. Smith has approached this arbitration with a prejudiced mind, to the point of being hostile to one of the parties. I venture to think this may have something to do with the first letter written by D&P on 25 June 1987. Paragraph 2 thereof could have been the cause of it all. It informed Mr. Smith that Turner was not happy with Mr. Smith as arbitrator and that Turner had requested the judge to hear further arguments which request was turned down. It also informed Mr. Smith that Turner had since appealed against the decision of the judge appointing him as arbitrator. Rightly, this letter should have merely informed Mr. Smith that he has been appointed arbitrator and nothing more. I should add here that having considered the affidavits of Mr. Simon Brent Stebbings and Miss Deborah Elizabeth Phillips, both of Messrs. Freshfields, filed herein, I see nothing improper in the communications between Freshfields and Mr. Smith.

I would like to say that in coming to the views above, I have very carefully considered the two letters dated 7 February 1988 and 21 March 1988 written by Mr. Smith to the solicitors of the parties where he made general explanations for his conduct. I have also considered the contexts in which the various alleged offensive letters of Mr. Smith were written. It is of interest to note that in his letter of 7 February 1988, Mr. Smith said that

"jocular comments" were "seized upon and their significance grossly exaggerated". I do not see anywhere in this long series of correspondence where jocular comments were justified. On the contrary, all the correspondence were conducted seriously. Mr. Smith did not identify which particular comments were jocular. I don't think any of the comments of Mr. Smith were made in a jocular vein. Probably Mr. Smith had by then realized that some of his comments or remarks have gone beyond the bounds of propriety and sought to explain them by saying they were "jocular comments". I would also stress that the comments were not made off the cuff in the heat of an exchange. They were expressed in writing and Mr. Smith obviously had time to reflect on them.

I can understand the difficulty which Mr. Smith faced: a non-lawyer who is not familiar with the statutes of Singapore. But he is an experienced arbitrator. When a point of law is raised and an arbitrator is not sure of the position, he should first hear submissions on it and *only then* make his comments and ruling. The decision should be conveyed in a tone and manner consistent with the dignity and impartiality of an arbitrator. If the arbitrator is still not sure of the legal position after hearing the parties, then obviously he can and should, through the parties, seek the assistance of the court. I am afraid in respect of both the two legal points raised by Turner/SLB – the Legal Profession Act issue and the clause 22 issue – the approach taken by Mr. Smith does give the impression of being adversarial.

I wish to emphasise that the fact that an arbitrator is alleged to have ruled in favour of one side most of the time (or as in the present case, almost all the time) is neither here nor there. But the manner in which an arbitrator goes about making each ruling is crucial. In the instant case, I would say, having regard to all the particulars of complaint indicated above, and if I may use the words of Cozen-Hardy M.R. in *Re Enoch & Zaretzky Bock & Co.*,[9] clearly in the present circumstances "it would not be satisfactory, it would not be fair, it would not be just, to leave the rights of the parties, as they necessarily would be, in (Mr. Smith's) sole hands." Mr. Smith's conduct has destroyed the confidence of at least Turner in his ability to come to a fair and just conclusion. Not only has it been *amply* established that "it might reasonably be suspected by fair-minded persons that (Mr. Smith) might not resolve the question before him with a fair and unprejudiced mind" (the words of the Australian High Court in *R.* v. *Watson*[11]), it has clearly been shown that in this case there is a real likelihood of bias.

As should be apparent from the above, I would also hold that, besides bias, there are two other separate grounds, upon which Mr. Smith's removal is warranted. These are:

(i) His having made up his mind that there were no merits in the clause 22 issue without hearing the parties: see his letter of 10 November 1987. Here, Mr. Smith has breached the rules of natural justice. This is misconduct.

(ii) His refusal to give his consent to refer the clause 22 issue to the court for a decision when he decided that he was unable to rule on it. As this issue goes to the root of Mr. Smith's jurisdiction to commence hearing, he has misconducted the proceedings by pressing ahead, when he himself said that the arguments of SLB were persuasive.

In the result, and with regret, I have to order that Mr. Smith be removed as the arbitrator. The costs of this motion shall be borne by the respondents.

Order accordingly.

Solicitors: *Shook Lin & Bok; Cooma Lau & Loh & M. Karthigesu.*

BANK NATIONALE DE PARIS v. SHIN HONG HANG ENTERPRISE PTE. LTD. & ORS.

[A.C.J. (Lai Kew Chai J.) 11 May 1988]

[Singapore – Summons-in-Chambers No. 6766 of 1987]

Civil Procedure – Appeal – Leave to appeal out of time – Application for – Application made after substantial time lapse from date of court orders – Whether special circumstances exist to justify application – R.S.C. 1970, O. 56.

The plaintiffs sought leave to appeal and leave to appeal out of time to the Court of Appeal against two orders made by the court. The application was made after a delay of about two years and five months after the first order was made and almost 11 months after the second order was made. Counsel for the plaintiffs relied on *Property and Reversionary Investment Corporation Ltd.* v. *Templar & Anor.*[2] where a landlord was granted leave to appeal to the Court of Appeal owing to the special circumstances shown, although there was a delay of about two years and seven months.